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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,123	06/30/2003	Kennon Yi	T3465-908318	3029
181	7590	12/20/2005	EXAMINER	
MILES & STOCKBRIDGE PC 1751 PINNACLE DRIVE SUITE 500 MCLEAN, VA 22102-3833			DANG, HUNG XUAN	
			ART UNIT	PAPER NUMBER
			2873	

DATE MAILED: 12/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/608,123

Applicant(s)

YI, KENNON

Examiner

Hung X. Dang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 31-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 31-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

1. The amendment filed on 10/6/05 has been entered.

Double Patenting Rejection

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Rejection, Obviousness Type Double Patenting

3. Claims 1-12 and 31-37 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-23 of U.S. Patent No. 6,926,403 (Yi et al). Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-23 of U.S. Patent No. 6,926,403 (Yi et al) anticipated claims 1-12 and 31-37 of this application.

Claims 1-23 of U.S. Patent No. 6,926,403 (Yi et al) claiming Eyewear, comprising: a half-jacket frame, including: a left indent, a left upper lens groove adapted to receive a left lens, a right indent, and a right upper lens groove adapted to receive a right lens; and a removable shield, extending from the half-jacket frame to a wearer's face to prevent direct impingement of air and dust on the wearer's eyes, the removable

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shield including: a left lens opening, a left detent to engage the left indent, a left lower lens groove, adapted to receive the left lens and mate circumferentially with the half-jacket frame, a right lens opening, a right detent to engage the right indent, and a right lower lens groove, adapted to receive the right lens and mate circumferentially with the half-jacket frame; wherein the left and right lenses are removable; wherein the half-jacket frame is rigid and cast in one piece from a metal including titanium; wherein the removable shield includes a rigid plastic segment and a pad; wherein the pad is air-permeable foam; wherein the pad has a thickness 't', wherein 't' is about 0.25 inches; wherein the half-jacket frame includes substantially rigid left and right temples; wherein the half-jacket frame includes slip resistors carried by the left and right temples; wherein the slip resistors are permanently affixed to the left and right temples with an adhesive; , wherein at least one of the left and right temples includes a temple gripping means for a wearer to grip the temple, the temple gripping means being substantially hidden when the goggles are worn, the temple gripping means including a thumb-shaped indentation formed in the temple; wherein the half-jacket frame and the removable shield are configured to form together a complete orbital surrounding the left lens and a complete orbital surrounding the right lens; wherein the left upper lens groove mates coterminously with the left lower lens groove and the right upper lens groove mates coterminously with the right lower lens groove (see claims 1-23).

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4. Any inquiry concerning this communication should be directed to Examiner Dang at telephone number (571) 272-2326.

12/05

A handwritten signature in black ink, appearing to read "Hung Dang", with a stylized, looped ending.

HUNG DANG

PRIMARY EXAMINER

TC 2800